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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

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JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

V.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENTS

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No. 689

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion of the Court of Appeals of Maryland appears in full on pp. 114 through 124 of the Appendix, and is also reported in 247 Md. 126, 230 A. 2d 452 (1967).

JURISDICTION

The decision of the Court of Appeals of the State of Maryland was entered on June 7, 1967. The Petition for Writ of

Certiorari was filed on October 5, 1967, and was granted on March 4, 1968. The jurisdiction of this Court was invoked under 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

1. Whether this case is moot.

2. Whether injunctions barring Petitioners from holding public meetings were invalid prior restraints in violation of the First and Fourteenth Amendments.

3. Whether the issuance of the injunctions was justified by the existence of a clear and present danger.

STATEMENT OF THE CASE

Respondents accept the Petitioners' Statement of the Case with the following additions:

The rally at which Petitioners spoke was held a week or ten days after Petitioners had spoken in Baltimore City, (A. 67), and in their speeches, Petitioners made reference to their rallies held in Baltimore (A. 80, 82, 83, 93, 108 and 109). The rally in Princess Anne was similar to the ones in Baltimore in that the nature of it was to stir up the white people against Negroes and Jews (A. 47 and 57). Petitioners anticipated that by holding the rally on successive nights, they would be able to substantially increase the crowd they would draw to the speeches (A. 81).

In general, the relationship between the races in Princess Anne at the time that Petitioners spoke there in 1966 was delicate at best. Tensions had been running high for sometime, and the atmosphere in the community was such that any stirring of the people could have set off a serious riot (A. 38, 39 and 62). As Petitioners spoke, tension in the

crowd rose, among the whites as well as Negroes. On the evening of the 6th the police were able to maintain law and order, but if the rallies had continued, there would not have been sufficient police officers available to properly supervise the rally (A. 38 and 49). If a riot had broken out, police officers would have had to have been taken off of other important duties to control and maintain the tumult (A. 40).

During the course of their speeches, Petitioners made numerous references to the use of force to obtain their goal of white supremacy (A. 83, 86, 92, 94, 105, 108 and 111). The small group of Negroes in the assembled crowd were warned to leave the country. They were warned that they could leave either voluntarily, or "leave in a box" (A. 111).

SUMMARY OF ARGUMENT

I.

The only matter properly before this Court for review is the *ex parte* Temporary Injunction issued in these proceedings by the Circuit Court for Somerset County. This injunction expired by its own terms almost two years ago, and any decision of this Court could not affect the action taken. Accordingly, any decision that this Court could make in the case before it would be vain, and would act in a vacuum. The issue before this Court is moot and properly should be dismissed as such. *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960).

II.

There is nothing in either the First or the Fourteenth Amendment which prohibits a State court in a proper case from issuing an injunction which imposes a prior restraint on speech.

This Court has historically recognized the right of a State to restrict that class of speech which has never been felt to be constitutionally protected. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). The right of a State to guard against such speech is not restricted merely to punishment, but the State may act to prevent an abuse of one's right to speak out on matters of public interest and importance. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). If the right to impose prior restraint on certain classes of speech is acknowledged, an appropriate means of imposing such restraint is by a State court injunction proceedings. *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941).

III.

A clear and present danger sufficient to justify imposition of a prior restraint on speech exists where speakers exhort a crowd on to violence and rioting. *Feiner v. New York*, 340 U.S. 315 (1951). The clear and present danger test is not limited to the "fighting words" doctrine of face to face epithets and insults directed at those listening to the speaker. The speeches of Petitioners on August 6, 1966, contained a clear call to their listeners in the audience to react violently to deny others their civil liberties. The call of Petitioners during their speeches to "non-violence" were mere empty words, completely over-shadowed by the call to violence contained in their other remarks. On the basis of the speeches made by Petitioners prior to the granting of the injunction, the Court was justified in finding that Petitioners were inviting civil disturbances, and the Court was justified in granting the injunction.

In addition to the invitation to violence contained in Petitioners' harangues, there was also contained therein sufficient "fighting words" to bring the case within the bounds of *Chaplinsky v. New Hampshire*, 315 U.S. 568

(1942). The threats made to Negroes in the audience listening to Petitioners on August 6, and the vile and abusive language used by Petitioners constituted such "fighting words" to justify the issuance of the injunction. The use of such "fighting words" in their speeches on the 6th, justified the restraint on the Petitioners' speeches under *Chaplinsky v. New Hampshire, Feiner v. New York,* and *Beauharnais v. Illinois.*

ARGUMENT

I.

THE ISSUE NOW BEFORE THIS COURT IS MOOT.

The only question properly before this Court now is an *ex parte* temporary injunction issued by the Circuit Court for Somerset County. Although the Circuit Court issued an Interlocutory Injunction for ten months as well as its Temporary Injunction, the issuance of the Interlocutory Injunction was reversed by the Maryland Court of Appeals and is thus not properly before this Court on appeal by Petitioners.

On the issue of the lapse of time between the initial granting of the *ex parte* Temporary Injunction by the Circuit Court for Somerset County, and the final determination by the Maryland Court of Appeals, reversing in part and affirming in part, Respondents respectfully urge that Petitioners should not at this late stage be allowed to condemn the action taken by the Courts of Maryland on the grounds of delay in prompt redress of their alleged grievances.

The initial *ex parte* Temporary Injunction was granted on the 7th day of August, 1966. By the terms of the Order signed by the Court, the matter was to come on for hearing on August 17th, a period of ten days from the date of the

granting of the *ex parte* Temporary Injunction. It appears from the record that Petitioners did nothing to bring this matter to a hearing more promptly. Under the Maryland Rules of Procedure, a party against whom an *ex parte* injunction has been granted may obtain a hearing on not more than two days' notice. Maryland Rule BB 72. This is an absolute right and if at the time the Temporary Injunction was granted, Petitioners truly wanted to have the matter resolved without delay, they could, and should, have exercised the rights existing under Maryland Rules. There is no charge made, as indeed their could not be, that the rules are applied arbitrarily or improperly so that any request made by Petitioners would not have been honored.

Just as the record is devoid of any showing that Petitioners attempted to have the hearing on the *ex parte* Temporary Injunction heard promptly, so it is devoid of any showing that Petitioners asked that the Maryland Court of Appeals set the appeal ahead on their docket so that it would be heard specially. Under Maryland Rule 845 (c), on appeal a case may be advanced on the Court's docket upon showing of good cause on motion of a party. Petitioners filed no such motion. In fact, though at one point Petitioners filed a Motion to Shorten Time for Transmission of Record, they subsequently filed a Motion to Lengthen the Time for Transmission of Record, thus themselves delaying the appeal of the case.

Respondents submit that Petitioners should not now be allowed to claim that they were denied speedy action on the alleged interference with their rights of free speech. If in fact their free speech was improperly restrained, and if in fact, there was any unreasonable or undue delay in their case being heard through the Courts, Petitioners have waived such delays by their own actions, or more properly, by their own inactions.

Petitioners cite *Walker v. City of Birmingham*, 388 U.S. 307 (1967) to support their argument that this case should not be dismissed as moot, for if it is so dismissed, they allege, they are left with no way of effectively testing their rights. It is interesting to note that in *Walker* this Court took pains to point out that Petitioners therein did not even attempt to follow the proper procedures available to them to establish their rights.

In the opinion for the Court written by Mr. Justice Stewart, it was said that:

> "This case would arise in quite a different constitutional posture if the petitioners, before disobeying the injunction, had challenged it in the Alabama courts, and had been met with delay or frustration of their constitutional claims. But there is no showing that such would have been the fate of a timely motion to modify or dissolve the injunction." p. 318.

In concluding the opinion which affirmed the action of the lower Court, it was said that:

> "But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." p. 321.

Respondents submit that the rationale in *Walker* is analogous to the instant case. Petitioners herein made no attempt to have the *ex parte* Temporary Injunction issued by the Circuit Court for Somerset County heard without delay, nor did they take any steps to have the Maryland Court of Appeals rule on the pending Interlocutory Injunction during the term of the injunction. They now deny that the issue is moot because, they claim, they had no adequate means of having this case considered prior to the expiration of the Injunctions. This claim is without merit, and may be seen to be such by a glance at the Maryland Rules of Procedure and the docket entries in the case.

Respondents earnestly suggest that this Court should follow the precedent set down in *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960). In that case, this Court declined to consider the issue raised therein on the merits on the grounds that any action it might then take would be wholly ineffectual. It was stated that

> "An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other." 361 U.S. 371.

If indeed this Court intends to review State Court injunction proceedings, it should undertake such a review in a case in which petitioners have carried out their obligation under State procedures to test the efficacy and fairness of such procedures. Absent such test, the issue before this Court should justly be considered as moot.

II.

THE FIRST AND FOURTEENTH AMENDMENTS DO NOT TOTALLY PROHIBIT THE RIGHT OF A COURT TO ISSUE A TEMPORARY OR INTERLOCUTORY INJUNCTION BARRING PERSONS FROM PARTICIPATING IN PUBLIC MEETINGS EVEN THOUGH SUCH TEMPORARY OR INTERLOCUTORY INJUNCTION MAY IMPOSE A PRIOR RESTRAINT ON SPEECH.

The rule of law that Petitioners wish this Court to propound is one which would establish that in no instance may a state Court under any circumstances issue any injunction which would prohibit or restrain any speech. The inherent dangers in any such ruling are staggering, and this Court has never indicated that the First and Fourteenth Amendments go so far as to permit unrestricted speech and assembly, regardless of the nature of the speech, or the possible consequences thereof. To the contrary, this Court has consistently recognized the rights of the States

and their courts to punish or *prevent* certain classes of speech which have never been thought to raise any constitutional problem. These include

> ". . . the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and they are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).

Two years before *Chaplinsky* this Court had recognized that State authorities have the power to move against not only violent acts, but also against ". . . words likely to produce violence in others". It was said that:

> "No one would have the heartihood to suggest that the principle of freedom of speech sanctions *incitement to riot* or that religious liberty connotes the privilege *to exhort others to physical attack upon those belonging to another sect.* When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State *to prevent* or punish is obvious." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940). (Emphasis added.)

Even in *Near v. Minnesota*, 283 U.S. 697 (1931) cited by Petitioners, this Court recognized the inherent power of a State Court to act by way of injunction to restrain certain classes of speech.

> "The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force." p. 716.

If this Court should recognize, as Respondents suggest it should, that there is nothing in the Constitution, nor even in good common sense, that requires that any man be allowed to say anything, at any time, regardless of the consequences, then we suggest that the proper forum for determining when and to what extent restraints on speech may be applied, is through a court of competent jurisdiction. Surely, it cannot be suggested that only this Court is the one which must decide the issues in all cases, and in the first instance. Certainly, under our basic concept of separation between the state and Federal governments, appropriate State *nisi prius* courts must be given the authority to deal on a case by case basis with restraints on speech.

This Court has recognized the inherent desirability of having a court of competent jurisdiction hear and review issues involving prior restraints. It was said in *Freedman v. Maryland*, 380 U.S. 51, 58 (1965) that:

> "The teaching of our cases is that, because only a judicial determination in an adversary proceeding insures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint."

Moreover, Respondents do not take exception to the power of this Court to set out the guidelines which lower courts, including State courts, must follow when attempting to apply prior restraints to speech.

It is on the issue of the right of a State, and in particular a State court, to deal on a case by case basis with individual situations, that Respondents differ strongly in this case with Petitioners.

Petitioners suggest that the First and Fourteenth Amendments require an absolute prohibition against prior restraints directed towards public meetings. They have at-

tempted to draw strength to their position on this issue from cases dealing with prior restraints on free speech imposed through statutes, and in particular, statutes requiring licenses for the holding of public meetings.[1] The critical difference between a State's right to impose prior restaints on speech statutorily, and for a State Court to review an individual case to determine if in the light of the facts there under consideration, prior restraint of speech by way of injunction is appropriate, was met head on in *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941). Mr. Justice Frankfurter in his opinion for the Court sustaining the action of the Illinois Court in granting an injunction against the Milkwagon Drivers Union said, that:

> "Such a decree, arising out of a particular controversy and adjusted to it, raises totally different constitutional problems from those that would be presented by an abstract statute with an overhanging and undefined threat to free utterance. To assimilate the two is to deny to the states their historic freedom to deal with controversies through the concreteness of individual litigation rather than through the abstractions of a general law." pp. 292-293.

Meadowmoor, supra, dealt with an injunction issued by an Illinois Court enjoining violent acts in connection with

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[1] In the sole case cited by Petitioners in their brief involving an injunction in support of their argument *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 36 U.S.L.W. 4385 (May 20, 1968), this Court specifically noted that:

> "All we decide here is that because the Shopping Center serves as the community business block 'and is freely accessible and open to the people in the area and those passing through,' . . . the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment Rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put."

Further, it should be noted that there was no question of violence in connection with the picketing carried out in that case.

picketing being carried out by the Union. The question presented to the Court was whether a State could choose to authorize its Courts to enjoin acts of picketing which themselves were peaceful, but when the picketing was enmeshed with contemporaneously violent conduct. The evidence disclosed that during the course of the Union dispute, besides peaceful picketing of the stores handling the Meadowmoor Dairies' products, there were more than fifty incidents of violence scattered throughout the area served by Meadowmoor. It was in the light of this evidence that the Illinois Court granted an injunction against the picketing. The Petitioners (Union) argued that the restraint imposed by the Court injunction against picketing interfered with their right of free speech. But the Supreme Court noted that picketing, though in its general context constituted the "working man's means of communication" could, ". . . in a context of violence . . . lose its significance as an appeal to reason and become part of an instrument of force." The Court immediately thereupon noted that, "such utterance was not meant to be sheltered by the Constitution." p. 293.

In *Meadowmoor*, this Court took note of the unquestioned right of the State of Illinois to act to protect its citizens against coercion by fear of violence, and that acts, which in isolation may be peaceful themselves, "may be part of a coercive thrust when entangled with acts of violence." The Court noted that "the picketing . . . was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful." It was specifically recognized that a State court could base the issuance of an injunction on protection against future violence on a history of past misconduct. pp. 294-5.

Respondents recognize that freedom of speech and freedom of assembly are basic to the democratic process under which we live and survive, but we submit that our society and the liberty we enjoy under it, are not advanced by unbridled, irresponsible and uncontrolled violence brought about by speeches and harangues of those bent on destroying our society, and remolding it in the shape as they believe it ought to be. Petitioners' argument that any speech, regardless of its nature, is protected from prior restraint by the First and Fourteenth Amendments, and may not be prevented, but only punished, asks this Court to adopt a rule that the states may not lock the barn *before* the horse is stolen. Or to put the matter more in the context of the current situation, and to again refer to the *Meadowmoor* case, we submit that Petitioners' argument, if sustained by this Court, would prevent the State from placing confidence in its Chancellor's Decree, and compel it to rely exclusively on the policeman's club. *Milk Wagon Drivers Union v. Meadowmoor Dairies, supra,* at p. 296.

Respondents earnestly suggest that there is no authority in law nor basis in principle for the rule Petitioners wish the Court to adopt prohibiting courts from ever enjoining or restraining speech, and that this Court should, as it has in the past, recognized that speech can have the effect of force, and, under certain circumstances must be prevented, as well as punished.

If this Court now adopts a rule as proposed by Petitioners to the effect that a court may not under any circumstances impose injunctive restrictions upon persons who claim interference with First Amendment free speech rights, it is placing greater restrictions on the rights of a court to act, than are placed against legislative bodies.

Although there are numerous cases from this Court voiding State laws requiring that licenses or permits be obtained prior to holding public meetings, this Court has also recognized that a State has the right to adopt proper laws requiring permits for speaking or assembly, even against claims that such laws interfere with the First Amendment right of free speech.

In *Kovacs v. Cooper*, 336 U.S. 77 (1949), this Court held that a Trenton, New Jersey Ordinance prohibiting "loud and raucous noises" was proper and did not go beyond reasonable regulation. Further, against the argument that the Ordinance was a prior restraint on free speech, the Court found that sound amplification in streets and public places is subject to reasonable regulations. See also *Cox v. New Hampshire*, 312 U.S. 569 (1941). Even in the area of censorship, this Court has recognized the right of a State to adopt legislation imposing prior restraints on the lewd and obscene. *Times Film Corporation v. Chicago*, 365 U.S. 43, re-hearing denied 365 U.S. 856 (1961).

III.

THE ISSUANCE OF THE INJUNCTIONS WAS JUSTIFIED BY THE EXISTENCE OF A CLEAR AND PRESENT DANGER.

(a) The invitation to riot by the use of force and violence clearly expressed in Petitioners' speeches constituted a sufficient clear and present danger to justify the issuance of the injunctions.

Respondents agree with Petitioners that if injunctions are to be allowed to be issued by State courts, even against a claim of a prior restraint of free speech, the test to be applied in granting such injunctions is the existence of a clear and present danger. Respondents do, however, except to Petitioners' interpretation of the existing law, and the application of the present facts to that law.

The issue raised by the Injunction granted by the Court below is not whether Petitioners were engaging in provocative speech, with which some of those in the assembled crowd might take exception, and thus act against Petitioners, but whether by their speeches, Petitioners were calling on the assembled crowd to take direct, violent and unlawful action against others. The "fighting words" doctrine expressed in *Chaplinsky v. New Hampshire, supra,* recognized the right of a person to speak his mind, even though by thus speaking he might create dissatisfaction with conditions as they are, "or even stir people to anger." *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949). However, neither *Chaplinsky* nor *Terminiello,* nor any of the other cases setting out the fighting words doctrine adopts a rule which permits persons to speak with the intent of inviting them to riot. To the contrary, this Court has adopted the view that a State does have the right to maintain law and order, and that when a speaker passes the bounds of argument or persuasion, and undertakes to incite riot, the State may act.

> "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and *undertakes incitement to riot,* they are powerless to *prevent a breach of the peace." Feiner v. New York,* 340 U.S. 315, 321 (1951). (Emphasis added.)

Feiner is of particular significance in this case because his conviction for disorderly conduct, which was affirmed by the Supreme Court, was based not on the fact that his views as expressed by him on a public street stirred people to anger, or constituted the "classical fighting words", but because his speech was a clear invitation to the crowd who listened to him, and who agreed with him, to riot.

Respondents submit that in the instant action the injunction issued by the Court below acted not so much to prevent the assembled crowd from attacking Petitioners because of objection to what they were saying, but rather was issued because Petitioners, by their harangue asked the crowd to use violence and force to prevent others from exercising their civil liberties. Though Respondents recognize the high purpose of the liberties of free speech and assembly, they also recognize that:

> "There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the dilusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the States appropriately may punish". *Cantwell v. Connecticut, supra*, at p. 310.

Petitioners' speeches were replete with references to fighting and violence. Only three days before Petitioners spoke in Princess Anne, some of them had spoken in Patterson Park in Baltimore, and their venom had found its mark, inciting the crowd in Patterson Park to riot.[2] This incident was given wide coverage in the news media throughout Maryland, and in their opening remarks to the crowd at Princess Anne on August 6 Petitioners, made note of the fact that they had been charged with starting a riot in Baltimore (A. 82). Petitioner Norton in his speech not only spoke of fighting, but exhorted the crowd on. With reference to the integration movement he hollered, "Don't accept it. Never accept it. Organize. Fight it. You'll win every time. You want to fight? Come on, let's hear it. Want to fight?" To his plea, the assembled crowd responded "Yeah, Yeah"

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[2] See *Lynch v. State*, 2 Md. App. 546, Petition for cert. filed _____.

(A. 86). The white people in the crowd were urged to get guns, to know how to use them and to always have them ready with a good supply of ammunition. They were told they were going to have to use them. They were told that the time had come. That they were going to have to fight to get their rights (T. 94).

Petitioner Lynch also called on the crowd to fight, saying that he was willing to fight and that he would always be willing to do so. He said "yes, hell yes, any way it takes to fight to stop this invasion of our white communities." He then called on the crowd to join with him. He said "How do you folks feel about it out there, huh?" Again the crowd responded to his invitation "(applause)" (A. 105-6). Not satisfied with merely stirring up the whites in the crowd, Norton threatened the Negroes who were standing by listening. He warned them to leave this country voluntarily, or that they would leave in a coffin (T. 111).

In mockery of a request by local police authorities to not mention a pending rape case in which Negroes were accused of raping a white woman, Petitioner Norton recounted a 1933 incident in which a Negro man was alleged to have grabbed a 75 year old white woman and raped her. He vividly recounted to the crowd the lynching that ensued from that incident, and he taunted the assembled crowd with an appeal to false local pride by referring to the fact that when the news media of the day criticized the lynching as an act of barbarism, a number of local citizens displayed stickers that read "I am an Eastern Shore man and damn proud of it" (A. 86). If this were not enough to suggest to the crowd the actions the speakers had in mind, Norton also referred to a then recent incident in Chicago in which, as Norton said, "This white people rose up, kicked hell out of the Niggers, burned 32 cars . . ." (A. 92).

Petitioner Lynch picked up the theme and told the crowd of an incident where a group of white people "went down there and kicked the living — chased them out of there, stoned their cars and a lot of other things" (T. 108).

Petitioners argue that during the course of their speech they cautioned against violence, and specifically asked the crowd to remain orderly. These empty pleas of Petitioners were no more sincere, nor intended to be followed, than were Mark Anthony's cries that he intended not to harm by what he said the honorable men of Rome "whose daggers have stabbed Caesar". Were the Petitioners sufficiently well acquainted with Shakespeare, they might well have been hoping to be able to mutter after their speech, as did Mark Anthony after his:

> "Now let it work. Mischief, thou art afoot,
> Take thou what course thou wilt."[8]

III.

(b) The vile, abusive and insulting language used by Petitioners in their speeches constituted such "fighting words" as to justify the issuance of the injunctions on the basis of the existence of a clear and present danger.

Respondents submit that in addition to the invitation to riot obviously and clearly contained in Petitioners' remarks on the night of August 6, 1966, there were included therein also threats, vile, abusive, libelous and insulting language, sufficient to constitute "fighting words" as to bring this case well within the bounds of the prior decisions of this Court in *Chaplinsky v. New Hampshire, supra; Feiner v. New York, supra* and *Beauharnais v. Illinois*, 343 U.S. 250 (1952). In *Chaplinsky*, the Defendants had used such terms as "damned racketeer" and "damned fascists" and in sus-

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[8] G. L. Kittridge, *Shakespeare's Julius Caesar*. Ginn. 1939.

taining their conviction, Mr. Justice Murphy, at p. 571 in 315 U.S. wrote that:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality".

Not only does a State have the right to punish one for the use of the "fighting words", but it also has the power to prevent one from using the same, as was recognized by this Court in *Cantwell v. Connecticut, supra,* p. 308.

Also in *Cantwell,* this Court recognized that:

> "Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, . . ." pp. 309-310.

In the present matter, the speeches of Petitioners were replete with not only insults to members of the Negro race, many of whom were in the crowd, but also outright threats to them. When referring to members of the Negro race, Petitioners in their speech were careful to always refer to them as "Niggers", a term which has come to be highly derogatory, insulting and offensive to members of the Negro race. Martin Luther King, the late internationally known and respected Minister, Nobel Prize Winner and recognized leader of the Negro people was contemptuously referred to as "Martin Lucifer Coon".

We submit that read in its entirety, and considered in the context of the language, tone, temperament of the crowd and the speakers, the harangues of Petitioners far exceeded the bounds of constitutionally protected language, and clearly fell within the "fighting words" language which a State may constitutionally limit, prohibit or punish.

In *Kunz v. New York*, 340 U.S. 290, 299 (1951) Mr. Justice Frankfurter eloquently classified the kind of language used by Petitioners in their speeches in Princess Anne on the night of August 6 as follows:

> "* * *. These terse epithets come down to our generation weighted with hatreds accumulated through centuries of bloodshed. They are recognized words of art in the profession of defamation. They are not the kind of insult that men bandy and laugh off when the spirits are high and the flagons are low. They are not in that class of epithets whose literal sting will be drawn if the speaker smiles when he uses them. They are always, and in every context, insults which do not spring from reason and can be answered by none. Their historical associations with violence are well understood, both by those who hurl and those who are struck by these missiles. Jews, many of whose families perished in extermination furnaces of Dachau and Auschwitz, are more than tolerant if they pass off lightly the suggestion that unbelievers in Christ should all have been burned."

The heavy threats, insults, libels and slanders hurled at Negroes in general, and in particular at those in the assembled crowd at the time Petitioners spoke in Princess Anne here under consideration, were such "fighting" words that do not come within any constitutional protection of free speech. Accordingly, the very use of those words themselves justified the issuance of the injunctions by the Circuit Court for Somerset County.

CONCLUSION

For all of the above reasons, this case should be dismissed as moot, or in the alternative, the decision below should be affirmed.

Respectfully submitted,

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